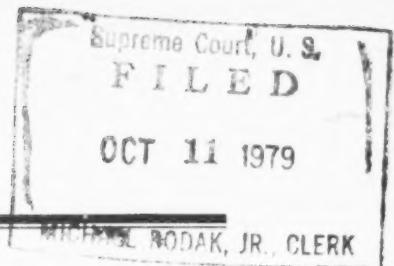


79-603



IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No. A-268

UNITED STATES OF AMERICA

v.

HOTEL CONQUISTADOR, INC.,
for itself and as successor
by merger to TROPICANA CASINO, INC.

Petitioner

**CONDITIONAL CROSS-PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF CLAIMS**

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QUESTION PRESENTED

Where the Government asserts that an item constitutes wages for Federal Insurance Contribution Act (FICA) tax purposes, whether an employer, who sues for a refund of the employer portion of such tax paid with respect to such item, must first either reimburse his employees for FICA tax withheld from them with respect to such item or take some other steps to protect their interests, in order to claim refund of the employer portion of such tax.

STATEMENT

In an opinion entered April 18, 1979, the Court of Claims held that noncompensatory meals furnished by an employer to his employees for the convenience of the employer were not "wages" for purposes of the Federal Insurance Contribution Act (FICA) and the Federal Unemployment Tax Act (FUTA). The Court of Claims also held, however, that an employer cannot claim a refund of the employer portion of FICA tax paid with respect to such meals without first either refunding the employees' portion of FICA tax withheld from such employees and paid over to the Internal Revenue Service with respect to such meals, or taking some other action to protect the employees' right to such refund. Judgment was entered by the Court of Claims on July 13, 1979.

Because of the amount involved in the second holding, Respondent seeks review by this Court of such holding of the Court of Claims only in the event this Court should grant a writ of certiorari on petition by the Government. If Petitioner files such a petition, Respondent will fully present the facts and argument applicable to the instant Conditional Cross-Petition in Respondent's brief in opposition. If Petitioner does not petition the Court for a writ of certiorari, Respondent's Conditional Cross-Petition will be withdrawn.

Respectfully submitted,

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